

when applicable to a product controlled at a lower level.

License Exception TSU is available for “technology” that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair “technology” controlled by 1E002.e, 1E002.f, 8E002.a, or 8E002.b.

N.B.: The “minimum necessary” excludes “development” or “production” technology and permits “use” technology only to the extent “required” to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of “minimum necessary” information.

2. *General Software Note.* License Exception TSU (“mass market” software) is available to all destinations, except countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, for release of software that is generally available to the public by being:

- a. Sold from stock at retail selling points, without restriction, by means of:
  1. Over the counter transactions;
  2. Mail order transactions;
  3. Electronic transactions; *or*
  4. Telephone call transactions; *and*
- b. Designed for installation by the user without further substantial support by the supplier.

NOTE: The General Software Note does not apply to “software” controlled by Category 5—part 2 (“Information Security”). For “software” controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.

[69 FR 46087, July 30, 2004]

#### SUPPLEMENT NO. 3 TO PART 774— STATEMENTS OF UNDERSTANDING

*Statement of Understanding—medical equipment:* Commodities that are “specially designed for medical end-use” that “incorporate” commodities or software on the Commerce Control List (Supplement No. 1 to

part 774 of the EAR) that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB) are designated by the number EAR99 (i.e., are not elsewhere specified on the Commerce Control List).

NOTES APPLICABLE TO STATE OF UNDERSTANDING RELATED TO MEDICAL EQUIPMENT: (1) “Specially designed for medical end-use” means designed for medical treatment or the practice of medicine (does not include medical research).

(2) Commodities or software are considered “incorporated” if the commodity or software is: Essential to the functioning of the medical equipment; customarily included in the sale of the medical equipment; and exported or reexported with the medical equipment.

(3) Except for such software that is made publicly available consistent with §734.3(b)(3) of the EAR, commodities and software “specially designed for medical end-use” remain subject to the EAR.

(4) See also §770.2(b) interpretation 2, for other types of equipment that incorporate items on the Commerce Control List that are subject to the EAR.

(5) For computers used with medical equipment, see also ECCN 4A003 note 2 regarding the “principal element” rule.

(6) For commodities and software specially designed for medical end-use that incorporate an encryption or other “information security” item subject to the EAR, see also Note 1 to Category 5, Part II of the Commerce Control List.

*Statement of Understanding—Source Code* For the purpose of national security controlled items, “source code” items are controlled either by “software” or by “software” and “technology” controls, except when such “source code” items are explicitly decontrolled.

[68 FR 68996, Dec. 10, 2003, as amended at 72 FR 62551, Nov. 5, 2007; 73 FR 56970, Oct. 1, 2008]

#### PARTS 775–780 [RESERVED]